

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREW CHERRY,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

CASE NO. 21-27 MJP

ORDER ON DEFENDANT'S
MOTION TO STAY
ENFORCEMENT OF JUDGMENT
PENDING APPEAL

This matter comes before the Court on Defendant's Motion to Stay Enforcement of Judgment Pending Appeal. (Dkt. No. 71.) Having considered Defendant's Motion, Plaintiff's Response (Dkt. No. 78), the Reply (Dkt. No. 79), and all relevant portions of the record, the Court GRANTS in part and DENIES in part.

BACKGROUND

Andrew Cherry is a former Microsoft employee who filed this action against The Prudential Insurance Company of America under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (ERISA) after it terminated his disability benefits under

Microsoft's employee-benefit plan. Cherry asserted two claims: (1) Prudential's termination of benefits was unlawful under 29 U.S.C. § 1132(a)(1)(B); and (2) Prudential breached its fiduciary duties by failing to act as an impartial administrator and instead actively looking for ways to terminate his claim, in violation of 29 U.S.C. § 1132(a)(3). (Compl. ¶¶ 7.1–7.14 (Dkt. No. 1).) The Parties filed the cross-motions for judgment on Cherry's first claim and reserved his second claim for trial. (Dkt. No. 24.) This Court found Cherry was entitled to judgment on his claim under § 1132(a)(1)(B) and ordered Prudential to reinstate Cherry's benefits and pay him all unpaid benefits from the effective date of his termination to the date of the order. (Judgment (Dkt. No. 66).) Prudential now asks the Court to stay the enforcement of the Judgment pending an appeal.

ANALYSIS

Federal Rule of Civil Procedure 62(b) allows a party to obtain a stay enforcing a judgment by providing a bond or other security. "The posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible judgment and compensates him for delay in the entry of the final judgment." N.L.R.B. v. Westphal, 859 F.2d 818, 819 (9th Cir. 1988). Rule 62(a) in conjunction with 62(c)(1) provides that an interlocutory or final judgment in an action for an injunction is not stayed after being entered, even if an appeal is taken. "In cases involving injunctive relief, it is discretionary with the court whether to allow a stay." Hicklin v. Hartford Life & Acc. Ins. Co., No. CV06-4543 GAF (JTLX), 2008 WL 638238, at *1 (C.D. Cal. Feb. 28, 2008) (citation and internal quotation omitted).

"The standard for evaluating stays pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction At one end of the continuum, the moving party is required to show both a probability of success on the merits

1 and the possibility of irreparable injury. At the other end of the continuum, the moving party
2 must demonstrate that serious legal questions are raised and that the balance of hardships tips
3 sharply in its favor. The relative hardship to the parties is the critical element in deciding at
4 which point along the continuum a stay is justified.” Lopez v. Heckler, 713 F.2d 1432, 1435
5 (9th Cir.1983) (citations and internal quotations omitted)

6 **1. Past Benefits**

7 It is undisputed by the Parties that the portion of the Judgment awarding payment of past
8 benefits, plus interest, represents a money judgment that is subject to an automatic stay upon the
9 posting of a sufficient bond. Rather, Prudential asks the Court to waive the bond requirement,
10 which Cherry opposes. Rule 62 does not state that filing a bond is the only way obtain a stay, and
11 the Court has broad discretion to waive the bond requirement if it sees fit. See Townsend v.
12 Holman Consulting Corp., 881 F.2d 788, 796 (9th Cir. 1989), opinion vacated on reh'g, 914 F.2d
13 1136 (9th Cir. 1990), opinion amended and superseded, 929 F.2d 1358 (9th Cir. 1990),
14 and opinion vacated on reh'g, 929 F.2d 1358 (9th Cir. 1990). The Court, in exercising its
15 discretion, is not inclined to waive the requirement here. The Court GRANTS Prudential’s
16 Motion to stay as to the portion of Judgment awarding past benefits upon the posting of a
17 sufficient bond.

18 **2. Ongoing Benefits**

19 The Parties’ main dispute is whether the Court should exercise its discretion to grant a
20 stay as it applies to the portion of the Court’s Judgment reinstating Cherry’s long-term disability
21 benefits. At issue is whether the obligation to provide benefits going forward qualifies as an
22 injunction that is not automatically stayed.

1 There is no binding guidance for which the Court may follow in answering this question
 2 and district courts have come out differently. For instance, Prudential asks the Court to follow a
 3 recent Ohio District Court opinion, Laake v. Benefits Comm., W. & S. Fin. Grp. Co. Flexible
 4 Benefits Plan, where the court found that claims brought under Section 502(a)(1)(B) are for
 5 monetary as opposed to injunctive and therefore defendants were entitled to a stay of
 6 enforcement. No. 117CV611WOBKLL, 2022 WL 1233621, at *2 (S.D. Ohio Apr. 26, 2022). In
 7 contrast, Cherry asks the Court to follow two opinions from California District Courts, Hicklin v.
 8 Hartford Life & Acc. Ins. Co. No. CV06-4543 GAF (JTLX), 2008 WL 638238 (C.D. Cal. Feb.
 9 28, 2008) and Gunn v. Reliance Standard Life Ins. Co. No. 204CV01852FMCMANX, 2009 WL
 10 10671397 (C.D. Cal. May 20, 2009). The courts in these cases applied and interpreted relevant
 11 Ninth Circuit holdings to find that the payment of ongoing benefits is injunctive in nature. The
 12 Court finds the California decisions persuasive.

13 The Ninth Circuit defined an injunction as “an order that is directed to a party,
 14 enforceable by contempt, and designed to accord or protect some or all of the substantive relief
 15 sought by a complaint in more than temporary fashion.” Hicklin v. Hartford Life & Acc. Ins.
 16 Co., No. CV06-4543 GAF (JTLX), 2008 WL 638238, at *2 (C.D. Cal. Feb. 28, 2008) (quoting
 17 Gon v. First State Inc., Co., 871 F.2d 863, 865 (9th Cir. 1989)). The Hicklin court found that a
 18 judgment for the reinstatement of benefits meets the Ninth Circuit’s criteria – “it is enforceable
 19 by contempt; it is more than temporary; and it provides essentially all of the relief sought by
 20 plaintiff.” Id.; See also Id. at *2 n.2 (noting that even under the First Circuit's reasoning in J.
 21 Perez & CIA, Inc. v. United States, 747 F.2d 813, 814 (1st Cir.1984) (providing that “money
 22 judgments ... can be calculated and secured with relative ease a case involving an order to do,
 23 or not to do, something ... is, involving something like an injunction”), cited by defendant for the
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1 proposition that the relief was not injunctive, “this Court's order to provide ongoing benefits
2 (though ultimately transmitted in monetary form) is an order to continuously act— ‘an order to
3 do, or not to do, something’—as compared to a lump sum money judgment”).

4 This Court entered a Judgment for Cherry under 29 U.S.C. § 1132(a)(1)(B), which
5 allows, inter alia, a plaintiff to bring a claim to enforce his rights under the terms of the plan, or
6 to clarify his rights to future benefits. Here, the Judgment provides for the reinstatement of
7 Cherry’s benefits, and thus, enforces Cherry’s rights under the terms of the plan and clarifies his
8 right to future benefits. This ongoing benefits portion of the Judgment is enforceable by
9 contempt and is designed to provide some or all relief sought by Cherry. And it does more than
10 simply require payment of a lump sum of money to him, it requires Prudential to continuously
11 act to provide ongoing benefits. Accordingly, the Court finds that the ongoing benefits portion of
12 the Judgment is properly regarded as injunctive.

13 However, it is still within the Court’s discretion to grant Prudential’s request to stay. This
14 “turns on the Court’s weighing the probability of success on appeal and the balance of hardships
15 to the parties.” Id. Prudential does not argue this, but rather hinges its entire argument on its
16 assertion that Cherry’s ongoing benefits are monetary in nature and thus, subject to a stay. (See
17 Def. Reply at 2.) Since the Court has determined otherwise, it need not rehash that argument
18 here. As to the merits, the Court has already found in favor of Cherry and has no reason for
19 altering this opinion absent any argument from Prudential. Likewise, the balance of hardships
20 tips in favor of Cherry. Prudential has acknowledged that it has an excess of one trillion dollars
21 as of December 31, 2021. (Def. Reply at 4-5.) On the other hand, Cherry would have to continue
22 living without an income, something very few people can afford to do. In short, the amount of
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1 money is trivial to Prudential, but critical to Cherry. The Court DENIES Prudential's Motion as
2 it applies to the ongoing benefits portion of the Judgment.

3 **CONCLUSION**

4 Defendant's Motion to Stay Pursuant Enforcement of Judgment Pending Appeal is
5 GRANTED IN PART and DENIED IN PART. Defendant's Motion is GRANTED with respect
6 to the monetary damages portion of the Judgment, subject to Defendant posting an adequate
7 bond. However, Defendant's Motion is DENIED as to a stay of injunctive relief, which the
8 Court has determined are Plaintiff's ongoing benefits.

9 The clerk is ordered to provide copies of this order to all counsel.

10 Dated July 25, 2022.

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12 Marsha J. Pechman
13 United States Senior District Judge
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